

000-0004

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT
SOUTHERN DIVISION

92 CV 75460 DT
HORACE GILMORE

UNITED STATES OF AMERICA,

Plaintiffs,

v.

BROWNING-FERRIS INDUSTRIES,
INC., et al.,

Defendants.

CIVIL ACTION NO.



TABLE OF CONTENTS

I.	PURPOSE OF DECREE	5
II.	JURISDICTION	6
III.	PARTIES BOUND	6
IV.	DEFINITIONS	7
V.	GENERAL PROVISIONS	11
VI.	PERFORMANCE OF THE WORK BY SETTLING DEFENDANTS	13
VII.	ADDITIONAL WORK AND MODIFICATION OF THE SOW	22
VIII.	U.S. EPA PERIODIC REVIEW TO ASSURE PROTECTION OF HUMAN HEALTH AND THE ENVIRONMENT	23
IX.	QUALITY ASSURANCE	25
X.	SITE ACCESS, SAMPLING, DOCUMENT AVAILABILITY	26
XI.	REPORTING REQUIREMENTS	29
XII.	REMEDIAL PROJECT MANAGER/PROJECT COORDINATORS	31
XIII.	FORCE MAJEURE	32
XIV.	DISPUTE RESOLUTION	34
XV.	RETENTION AND AVAILABILITY OF INFORMATION	38
XVI.	REIMBURSEMENT	40
XVII.	STIPULATED PENALTIES	44
XVIII.	COVENANT NOT TO SUE	50
XIX.	INDEMNIFICATION; OTHER CLAIMS	54
XX.	CONTRIBUTION PROTECTION	55
XXI.	INSURANCE/FINANCIAL RESPONSIBILITY	55
XXII.	NOTICES	57
XXIII.	CONSISTENCY WITH NATIONAL CONTINGENCY PLAN	58
XXIV.	ENDANGERMENT AND EMERGENCY RESPONSE	58

XXV.	COMMUNITY RELATIONS	59
XXVI.	RETENTION OF JURISDICTION; MODIFICATION	59
XXVII.	EFFECTIVE DATE AND CERTIFICATION OF COMPLETION	60

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CONSENT DECREE

WHEREAS, the United States Environmental Protection Agency ("U.S. EPA"), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9605, placed the G&H Industrial Landfill in Macomb County, Michigan (the "Site" as specifically defined in Section IV of this Consent Decree) on the National Priorities List, which is set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 8, 1983, 48 Fed. Reg. 40658;

In response to a release or a substantial threat of a release of a hazardous substance at or from the Site, the U.S. EPA, in consultation with the State of Michigan, in 1983, commenced a Remedial Investigation and Feasibility Study ("RI/FS") pursuant to 40 C.F.R. § 300.68 for the Site;

U.S. EPA completed a Remedial Investigation ("RI") Report on August 6, 1990, and completed a Feasibility Study ("FS") Report on or about August 17, 1990;

The FS Report contained a proposed plan for remedial action at the Site;

On or about August 20, 1990, U.S. EPA, pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, published notice of the completion of the RI/FS and of the release of its proposed plan for remedial action in a major local newspaper of general circulation and provided an opportunity for public comment to be submitted in writing to U.S. EPA by September 18, 1990, or orally at a public meeting held in Shelby Township, Michigan on August 28, 1990;

U.S. EPA, pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, has kept a transcript of the public meeting and has made this transcript available to the public as part of the administrative record located at U.S. EPA, Region V, 77 West Jackson Boulevard, Chicago, Illinois and at the Shelby Township Library, 51680 Van Dyke, Utica, Michigan;

On or about January 11, 1991, U.S. EPA, pursuant to Section 122 of CERCLA, 42 U.S.C. § 9622, notified the parties listed in Appendix 1 that the U.S. EPA determined each party to be a potentially responsible party ("PRP") regarding the proposed remedial action at the Site;

In accordance with Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), U.S. EPA notified the State of Michigan on or

about January 11, 1991, of negotiations with PRPs regarding the scope of the remedial design and remedial action for the Site, and U.S. EPA has provided the State with an opportunity to participate in such negotiations and be a party to any settlement;

Pursuant to Section 122(j) of CERCLA, 42 U.S.C. § 9622(j), on or about January 11, 1991, U.S. EPA notified the federal natural resource trustee of negotiations with PRPs on the subject of addressing the release or threatened release of hazardous substances at the Site;

Certain persons have provided comments on U.S. EPA's proposed plan for remedial action, and to such comments U.S. EPA provided a summary of responses, all of which have been included in the administrative record referred to above;

Considering the proposed plan for remedial action and the public comments received, U.S. EPA has reached a decision on a final remedial action plan, which is embodied in a document called a Record of Decision ("ROD"), signed by the Regional Administrator of U.S. EPA, Region V, on December 21, 1990 (attached as Appendix 2 hereto), to which the State has given its concurrence, and which includes a discussion of U.S. EPA's reasons for the final plan and for any significant changes from the proposed remedial action plan contained in the FS;

U.S. EPA, pursuant to Section 117(b) of CERCLA, 42 U.S.C. § 9617(b), has provided public notice of adoption of the final remedial action plan set forth in the ROD, including notice of

the ROD's availability to the public for review in the same locations as the administrative record referred to above;

Pursuant to Section 117(d) of CERCLA, 42 U.S.C. § 9617(d), the notice has been published in a major local newspaper of general circulation;

U.S. EPA, pursuant to Section 117, modified the ROD as set out in an Explanation of Significant Differences ("ESD") (attached hereto as Appendix 3). U.S. EPA published notice of the ESD on March 18, 1992, in a major local newspaper of general circulation and the ESD has been made available to the public for review in the same locations as the Administrative Record referred to above. U.S. EPA held a public meeting regarding the ESD at the Shelby Township Hall in Utica, Michigan on March 25, 1992.

Pursuant to Section 121(d)(1) of CERCLA, 42 U.S.C. § 9621(d)(1), U.S. EPA and Settling Defendants believe that the remedial action plan adopted by U.S. EPA will attain a degree of cleanup of hazardous substances, pollutants and contaminants released into the environment and control of further release which, at a minimum, assures protection of human health and the environment at the Site;

The Parties believe the remedial action plan adopted by U.S. EPA and described in the ROD (as modified by the ESD), as set forth in the Scope of Work ("SOW") (included as Appendix 4), will provide a level or standard of control for such hazardous substances, pollutants, or contaminants which at least attains

legally applicable or relevant and appropriate standards, requirements, criteria, or limitations under federal environmental law or State environmental or facility siting law in accordance with Section 121(d)(2) of CERCLA, 42 U.S.C. § 9621(d)(2), and that such remedial action plan is in accordance with Section 121 of CERCLA, 42 U.S.C. § 9621, and with the National Contingency Plan ("NCP"), 40 C.F.R. Part 300;

Settling Defendants agree to implement the final remedial action plan adopted by U.S. EPA in the ROD (as modified by the ESD) and in accordance with the SOW, each of which is incorporated by reference into this Decree. U.S. EPA has determined that the Work required under the Consent Decree will be done properly by Settling Defendants and that Settling Defendants are qualified to implement the remedial action plan contained in the ROD (as modified by the ESD) and in the SOW; and

The Parties recognize, and intend to further hereby, the public interest in the expedition of the cleanup of the Site by avoiding prolonged and complicated litigation between the Parties.

NOW, THEREFORE, it is hereby Ordered, Adjudged and Decreed:

I. PURPOSE OF DECREE

1. The purpose of this Consent Decree is to provide for implementation by Settling Defendants of the final remedial design and remedial action selected by U.S. EPA for the Site, as set forth in the ROD (as modified by the ESD) and in accordance

with the SOW, and to provide for payment of certain response costs incurred and to be incurred by the United States at the Site.

II. JURISDICTION

2. This Court has jurisdiction over the subject matter herein pursuant to 28 U.S.C. §§ 1331(a) and 1345, and 42 U.S.C. §§ 9613(b) and 9622(d)(1)(A), and over the parties consenting hereto. Settling Defendants hereby waive service of the summons and complaint in this action.

III. PARTIES BOUND

3. This Consent Decree applies to and is binding upon the undersigned parties and their successors and assigns. The undersigned representative of each Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the U.S. Department of Justice certifies that he or she is fully authorized by the party or parties whom she or he represents to enter into the terms and conditions of the Consent Decree and to execute and legally bind that party to it. Settling Defendants shall provide a copy of this Consent Decree to the contractor(s) hired to perform the work required by this Consent Decree and shall require the contractor(s) to provide written notice of the Decree to any subcontractor retained to perform any part of the Work.

IV. DEFINITIONS

4. Whenever the following terms are used in this Consent Decree and in the Appendices attached hereto, the following definitions shall apply:

"Cleanup Standards" means the requirements respecting the degree of cleanup of groundwater, soil, or other environmental media that must be achieved by the remedial action, as set forth in the ROD (as modified by the ESD), Paragraph 11 of this Decree, and Section II., Parts C, D, E (Table 1), and G.5 of the SOW.

"Consent Decree" or "Decree" means this Decree and all appendices hereto. In the event of conflict between this Decree and any appendix, the Decree shall control.

"Contractor" means the company or companies retained by or on behalf of Settling Defendants to undertake and complete the Work required by this Consent Decree. Each contractor and subcontractor shall be qualified to do those portions of the Work for which it is retained. Each contractor and subcontractor shall be deemed to be related by contract to each Settling Defendant within the meaning of 42 U.S.C. § 9607(b).

"Explanation of Significant Differences" or "ESD" means the administrative Explanation of Significant Differences issued by U.S. EPA as required by Section 117(c) of CERCLA, 42 U.S.C. 9617(c), and attached to this Decree as Appendix 3, which describes significant changes in the remedial action requirements set forth in the Record of Decision for the Site.

"Future Response Costs" means all costs incurred by the United States pursuant to CERCLA, 42 U.S.C. §§ 9601 et seq., in connection with the Site after September 30, 1990, including all Oversight Costs, all costs of access required to be paid pursuant to Section X hereof, all costs of reviewing the remedial action at the Site pursuant to Section VIII (Periodic Review) hereof, and all costs incurred in enforcing this Decree.

"Hazardous substance" shall have the meaning provided in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

"National Contingency Plan" or "NCP" means the term used in Section 105 of CERCLA, 42 U.S.C. § 9605. The NCP is promulgated at 40 C.F.R. Part 300.

"Oversight Costs" means any costs not inconsistent with the National Contingency Plan incurred by the United States in monitoring and ensuring the compliance of Settling Defendants with this Consent Decree, including, but not limited to, payroll and other direct costs, indirect and overhead costs, sampling and laboratory costs, travel costs, contractor costs and costs of review of the Work performed pursuant to this Consent Decree.

"Parties" means the United States of America and the Settling Defendants.

"Past Response Costs" means those costs incurred by the United States in connection with the Site on or before September 30, 1990.

"Performance Standards" shall mean those standards of control and other substantive requirements, criteria or

limitations set forth in the ROD (as modified by the ESD) or in Section II of the SOW.

"Remedial Design Work Plan" or "RD Work Plan" means the plan which describes the overall management strategy for the design phase of the remedial action and includes plans and schedules for the different components of the remedial action, and which must be completed by Settling Defendants pursuant to Paragraph 12.a and b of this Decree and Section III, Task 1.A of the SOW.

"Remedial Design/Remedial Action Work Plan" or "RD/RA Work Plan" means the plan which includes the RD Work Plan and, in addition, describes the strategy for performing the construction, operation and maintenance, and monitoring of the remedial action, and which must be completed by Settling Defendants pursuant to Paragraph 12.c of this Decree and Section III, Task 1.B of the SOW.

"Record of Decision" or "ROD" means the administrative Record of Decision issued by U.S. EPA setting forth the remedial action requirements for the Site, attached as Appendix 2 hereto.

"Remedial Project Manager" or "RPM" means the person designated by U.S. EPA to coordinate, monitor or direct remedial activities at the Site pursuant to 40 C.F.R. Part 300.33 and Section XII (Remedial Project Manager/Project Coordinator) hereof.

"Scope of Work" or "SOW" means the plan, set forth as Appendix 4 to this Decree, for implementation of the remedial design and remedial action at the Site pursuant to the Record of

Decision (as modified by the ESD) and any subsequent modification of Appendix 4 pursuant to the provisions of this Decree.

"Settling Defendants" means those parties, other than the United States of America, who sign this Consent Decree.

"Site" refers to the location where the treatment, storage, disposal or other placement of hazardous substances was conducted at the G&H Industrial Landfill, or otherwise came to be located, as a result of disposal operations at the G&H Industrial Landfill, which Site is located in Shelby Township, Macomb County, State of Michigan, and includes, without limitation, the following areas (shown in greater detail on the map attached as Appendix 5): The Phase I, Phase II, and Phase III Landfill Areas; the Automobile Salvage or Disposal Yard (also known as the Junkyard); and the portions of the Rochester-Utica State Recreational Area which have been impacted by the landfill operations.

"State" means the State of Michigan; "Michigan Department of Natural Resources" or "MDNR" means the State's environmental protection agency.

"United States" means the United States of America.

"U.S. EPA" means the United States Environmental Protection Agency.

"U.S. DOJ" means the United States Department of Justice.

"Wetlands" means those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically

adapted for life in saturated soil conditions or as otherwise defined in 40 C.F.R. Parts 122.2 and 232.2.

"Work" means the design, construction and implementation of the tasks described in the ROD (as modified by the ESD), in accordance with the SOW, this Decree, and all plans or schedules submitted by Settling Defendants and approved by U.S. EPA pursuant to this Decree.

V. GENERAL PROVISIONS

5. Commitment of Settling Defendants to Perform RD/RA.

a. Settling Defendants agree jointly and severally to finance and perform the Work as defined in Paragraph 4 of the Decree.

b. The Work shall be completed in accordance with all requirements of this Decree, the ROD (as modified by the ESD), the SOW, the RD/RA Work Plan and all other plans or schedules submitted and approved by U.S. EPA under this Decree. The procedures for submission and approval of plans are set forth in Paragraphs 12 and 13 of this Decree.

6. Compliance with Applicable Laws, Permits and Approvals.

a. All activities undertaken by Settling Defendants pursuant to this Consent Decree shall be undertaken in accordance with the requirements of all applicable federal and State laws, regulations and permits.

b. Pursuant to Section 121(e)(1) of CERCLA, no federal, State, or local permits are required for Work conducted entirely on-site. Settling Defendants shall obtain all permits

or approvals necessary for off-site Work under applicable federal, State or local laws and shall submit timely applications and requests for any such permits and approvals.

c. The standards and provisions of Section XIII hereof describing Force Majeure shall govern delays in obtaining permits required for the Work and also the denial of any such permits, provided that Settling Defendants have made timely and complete application for any such permits.

d. Settling Defendants shall include in all contracts or subcontracts entered into for Work required under this Consent Decree provisions stating that such contractors or subcontractors, including their agents and employees, shall perform all activities required by such contracts or subcontracts in compliance with all applicable laws and regulations.

e. This Consent Decree is not a permit issued pursuant to any federal or State statute or regulation.

7. Formal Approval Required. No informal advice, guidance, suggestions or comments by representatives of the United States or the State on plans, reports or other documents submitted by Settling Defendants shall be construed as relieving them from obtaining any formal approvals, permits or other authorizations required by law or by this Decree. Further, no advice, guidance, suggestions or comments by such government representatives with respect to any submission by Settling Defendants shall be construed so as to relieve them of their obligations under this Decree or to transfer any of their

liability or obligations under this Decree to any other party or person.

8. Computation of Time. Unless otherwise provided, dates and time periods specified in or under this Decree are in calendar days. If the date for submission of any item or notification required by this Decree falls upon a weekend or State or federal holiday, the time period for submission of that item or notification is extended to the next working day following the weekend or holiday. Submission shall be deemed accomplished when the item is delivered or mailed to the required party or parties.

VI. PERFORMANCE OF THE WORK
BY SETTLING DEFENDANTS

9. Selection of Architect/Engineer and Contractor(s).

a. Architect/Engineer. All remedial design work to be performed by Settling Defendants pursuant to this Consent Decree shall be under the direction and supervision of a qualified professional architect or engineer. Within thirty (30) days of lodging of this Decree, Settling Defendants shall notify U.S. EPA and the State, in writing, of the name, title, and qualifications of the proposed architect or engineer to be used for all remedial design work to be performed pursuant to this Consent Decree. Selection of any such architect or engineer is subject to approval by U.S. EPA, in consultation with MDNR.

b. Contractor. All remedial action work to be performed by Settling Defendants pursuant to this Consent Decree

shall be under the direction and supervision of a qualified professional engineer.

(1) As soon as possible, but no later than fifteen (15) days prior to the date Settling Defendants initiate the demolition of existing structures on the Site pursuant to Section II.A of the SOW and not later than thirty (30) days prior to the date Settling Defendants initiate the sampling of the Junkyard pursuant to Section II.C of the SOW, Settling Defendants shall notify U.S. EPA and the State, in writing, of the name, title, and qualifications of the proposed engineer and the names of principal contractors and principal subcontractors proposed to be used in carrying out the Work identified in this subparagraph.

(2) As soon as possible after entry of the Decree, and at least thirty (30) days prior to the date upon which initiation of remedial action work is required under this Decree, except for the Work referred to in subpart (1) of this Subparagraph, Settling Defendants shall notify U.S. EPA and the State, in writing, of the name, title, and qualifications of the proposed engineer and the names of principal contractors and principal subcontractors proposed to be used in carrying out the Work to be performed pursuant to this Consent Decree.

(3) Selection of any engineer or principal contractor and/or principal subcontractor, under subpart (1) or (2) of this Subparagraph, shall be subject to approval by U.S. EPA, in consultation with MDNR.

c. Disapproval of Architect/Engineer or Contractor.

If U.S. EPA disapproves of the initial or subsequent selection of an architect or contractor, U.S. EPA shall specify, in writing, the reasons for such disapproval. Settling Defendants shall submit a list of alternate architects or contractors to U.S. EPA and MDNR within 30 days of receipt of the notice of disapproval. Within 14 days from receipt of the list, U.S. EPA, in consultation with MDNR, shall provide written notice of the names of the architects, engineers or contractors on the list of which it approves. Settling Defendants may select any approved architect, engineer or contractor from the list and shall notify U.S. EPA and MDNR of the name of the person or entity selected within 21 days of receipt from U.S. EPA of the approved list. If U.S. EPA does not approve or disapprove of any proposed architect or contractor or any proposed list of alternate architects or contractors within 14 days, and the delay prevents Settling Defendants from meeting one or more deadlines in a plan approved by U.S. EPA pursuant to this Decree, Settling Defendants may seek relief under the provisions of Section XIII (Force Majeure) hereof.

d. Replacement of Architect/Engineer or Contractor.

If, at any time, Settling Defendants propose to change an architect, engineer or contractor previously approved by U.S. EPA, they shall give written notice to U.S. EPA and MDNR of the name, title and qualifications of the proposed new architect, engineer or contractor. Such architect, engineer or contractor

shall not perform any Work until approval by U.S. EPA, in consultation with MDNR, has been given.

10. Scope of Work. Appendix 4 to this Consent Decree provides a Scope of Work ("SOW") for the completion of remedial design and remedial action at the Site. This Scope of Work is incorporated into and made an enforceable part of this Consent Decree.

11. Cleanup and Performance Standards/Technical Impracticability.

a. Cleanup and Performance Standards. The Work performed under this Consent Decree shall meet the Cleanup and Performance Standards, as these terms are defined in Section IV of this Decree.

b. Technical Impracticability.

(1) Petition. After a minimum of 15 years of operation of the groundwater extraction system, Settling Defendants may petition U.S. EPA to waive compliance with the groundwater Cleanup Standards in Table 1 of the SOW. Such petition will be based upon a demonstration pursuant to Section 121(d)(4) of CERCLA, 42 U.S.C. § 9621(d)(4), that achievement of the groundwater Cleanup Standards in Table 1 of the SOW is technically impracticable from an engineering perspective. Settling Defendants' petition shall include: (i) an identification of each groundwater Cleanup Standard for which a waiver is sought; (ii) a detailed justification setting forth the technical basis for the claim that it is technically

impracticable from an engineering perspective to achieve each such cleanup standard; (iii) a proposal for an alternate groundwater Cleanup Standard which shall reflect the lowest concentration of such substance, pollutant or contaminant that is technically practicable to attain from an engineering perspective; (iv) a description of any additional response actions taken or proposed to be taken by Settling Defendants to reduce hazardous substances, pollutants, and contaminants in groundwater to the lowest concentrations that are technically practicable from an engineering perspective; and (v) a demonstration that the remedial action work and/or any alternate cleanup standards at the Site, together with any additional response actions taken or proposed to be taken by Settling Defendants in the petition, will attain a degree of cleanup of any hazardous substances, pollutants or contaminants and of control of further releases which will assure protection of human health and the environment. Such demonstration shall include (a) the performance of residual risk calculations, as required by Sections II.E.2.a and II.E.2.b of the SOW, to show that the proposed alternate cleanup standard(s) would have a residual risk within the range of 1×10^{-4} to 1×10^{-6} , for substances with possible carcinogenic effects, or a Hazard Index value less than 1 for substances not believed to be carcinogens, and (b) an evaluation of the impact of any alternate cleanup standard(s) on environmental receptors at or near the Site. Settling Defendants

also shall submit a copy of their petition and supporting information to MDNR for review and comment, if any.

(2) Determination. Based on its review of the petition and the supporting documentation submitted by Settling Defendants pursuant to Subparagraph b(1), and after notice and a reasonable opportunity for the State to review and comment on any proposed waiver under this Subparagraph, U.S. EPA shall make a determination whether to waive compliance with any of the groundwater Cleanup Standards identified in Table 1 of the SOW and shall identify the alternate groundwater Cleanup Standards or other protective measures that shall be established. The determination shall be made in accordance with the ROD and applicable laws and regulations in effect at the time of the petition. Any alternate groundwater Cleanup Standards and/or any additional response actions selected by U.S. EPA, pursuant to this Subparagraph, shall meet the requirements of CERCLA and the NCP, including protection of human health and the environment. If U.S. EPA grants any petition pursuant to this Subparagraph, the SOW shall be modified in accordance with Section VII of this Decree, to include any alternate groundwater Cleanup Standard(s) established.

(3) Review. Settling Defendants may challenge the U.S. EPA's determination under Subparagraph b(2) in accordance with the Dispute Resolution provisions in Section XIV of this Consent Decree. U.S. EPA's determination shall be treated as a

determination regarding the adequacy and selection of the remedy within the meaning of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j).

(4) Periodic review. Any technical impracticability waiver granted pursuant to this Subparagraph shall be subject to the periodic review provisions of Section VIII of the Consent Decree and Section 121(c) of CERCLA, 42 U.S.C. § 9621(c).

(5) State Involvement. Nothing in this Paragraph shall affect the State's rights under Section 121(f) of CERCLA, 42 U.S.C. § 9621(f).

12. Work Plans.

a. Within 60 days of the lodging of this Consent Decree, Settling Defendants shall commence remedial design work by submitting their draft RD Work Plan to U.S. EPA and MDNR as set forth in the Submission Schedule in the SOW.

b. If the Consent Decree is not subsequently entered, Settling Defendants shall complete the RD Work Plan and shall have their liability for the Site reduced by the costs incurred by Settling Defendants for the completion of the RD Work Plan or, at their option, Settling Defendants may discontinue their Work on the RD Work Plan and receive no reduction of their liability for the Site by reason of costs incurred for such Work. Settling Defendants shall not be required to pay any stipulated penalties and Oversight Costs for U.S. EPA's review of their Work under this Paragraph prior to entry of the Consent Decree, but following entry shall pay all such stipulated penalties and

Oversight Costs that accrued prior to entry pursuant to Section XVI (Reimbursement) of this Decree.

c. Within 60 days of the entry of this Consent Decree, Settling Defendants shall submit their draft RD/RA Work Plan to U.S. EPA and MDNR as set forth in the Submission Schedule in the SOW.

d. All plans submitted shall be developed in conformance with the ROD (as modified by the ESD) and in accordance with the SOW, U.S. EPA Superfund Remedial Design and Remedial Action Guidance, the NCP and any additional guidance documents provided by U.S. EPA that are in effect at the time of plan submission. If an applicable U.S. EPA guidance document is changed or is issued which requires modification of plans under development, U.S. EPA may adjust deadlines of such plans as U.S. EPA determines necessary to incorporate such guidance into the plans being developed.

e. All plans shall be subject to review, modification and approval by U.S. EPA, in consultation with MDNR, in accordance with the procedures set forth in Paragraph 13 of the Decree.

f. All approved plans shall be deemed incorporated into and made an enforceable part of this Consent Decree. All work shall be conducted in accordance with the National Contingency Plan, the U.S. EPA Superfund Remedial Design and Remedial Action Guidance, and the requirements of this Consent

Decree, including the standards, specifications and schedule contained in the RD/RA Work Plan.

13. Approval Procedures for Work Plans and Other Documents

a. Upon review of each work plan or other document required to be submitted and approved by U.S. EPA pursuant to this Decree, and after consultation with MDNR, the U.S. EPA Remedial Project Manager (the "RPM") shall notify Settling Defendants, in writing, that a document is (1) approved, (2) disapproved, (3) modified by U.S. EPA to cure deficiencies, or (4) returned to Settling Defendants for modification. An explanation shall be provided for any disapproval or required modification.

b. Upon approval or modification of a submission by U.S. EPA, Settling Defendants shall proceed to implement the Work required.

c. In the event U.S. EPA partially disapproves or requests modification of a submission by Settling Defendants, Settling Defendants shall proceed to implement the Work in any approved portions of the submission, upon request by U.S. EPA and to the extent that U.S. EPA determines that such Work can be implemented prior to the approval of the revised submission. Settling Defendants also shall submit a revised document to U.S. EPA and MDNR curing the deficiencies within 30 calendar days of receipt of notice from U.S. EPA or such other time as may be agreed to by the Parties.

d. Settling Defendants may submit any disapproval, modification, or conditions of approval to which they object, for dispute resolution pursuant to Section XIV hereof. The provisions of Section XIV (Dispute Resolution) and Section XVII (Stipulated Penalties) of this Decree shall govern the implementation of Work and the accrual and payment of any stipulated penalties during dispute resolution. Implementation of approved portions of the submission shall not relieve Settling Defendants of any liability for stipulated penalties under Section XVII.

VII. ADDITIONAL WORK AND MODIFICATION OF THE SOW

14. No Warranty. The provisions of the SOW reflect the Parties' best efforts at the time of execution of this Decree to define the technical work required to perform the remedial action described in the ROD (as modified by the ESD). The Parties acknowledge and agree that approval by U.S. EPA of either the SOW or any plan submitted by Settling Defendants does not constitute a warranty or representation of any kind that the SOW or any such plan will achieve the Cleanup and Performance Standards, and shall not foreclose the United States or the State from seeking compliance with the applicable Cleanup and Performance Standards.

15. Modification of the Scope of Work. The Parties recognize that modification of the SOW may be required, e.g., to provide for additional work to meet: (1) the Cleanup and Performance Standards; or (2) any alternate groundwater Cleanup Standard established in accordance with Paragraph 11.b (Technical

Impracticability) of this Consent Decree. In such event, the following procedures shall be followed to amend the SOW:

- a. The party that determines that additional work or other modification of the SOW is necessary shall provide written notice of such determination to the other parties.
- b. The other parties shall respond to such notice in writing within thirty (30) days of receipt or at such other time as may be agreed to by the Parties.

16. Modification by Agreement. If the Parties agree on the modifications to the SOW, the agreement shall be in writing and shall be submitted, along with the amended SOW, for approval by the Court.

17. Dispute Resolution. If the Parties do not agree on the proposed modifications, they shall initiate dispute resolution pursuant to Section XIV of this Decree. The scope and standard of review set forth in Paragraph 41 of this Decree shall govern any judicial determination in such dispute.

VIII. U.S. EPA PERIODIC REVIEW TO
ASSURE PROTECTION OF HUMAN
HEALTH AND THE ENVIRONMENT

18. To the extent required by Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and any applicable regulations, U.S. EPA shall review the remedial action at the Site at least every five (5) years after the entry of this Consent Decree to assure that human health and the environment are being protected by the remedial action being implemented. If upon such review, U.S. EPA

determines that further response action is appropriate at the Site in accordance with Section 104 or 106 of CERCLA, 42 U.S.C. §§ 9604, 9606, then, consistent with Section XVIII (Covenant Not to Sue) of this Consent Decree, U.S. EPA, in consultation with MDNR, may take or require such action pursuant to Section 104 or 106 of CERCLA. This Paragraph shall not limit or affect, in any way, the authority of any party to seek additional work or modification of the SOW pursuant to Section VII (Additional Work and Modification of the SOW) of this Decree.

19. If U.S. EPA determines that further response action at the Site is appropriate pursuant to this Section of the Consent Decree, the Parties agree that in any judicial or administrative action initiated by the United States or U.S. EPA to require Settling Defendants to take such action or seeking reimbursement for the costs of the United States in undertaking such action, the following documents shall be admissible, as follows, for any purpose, including as evidence of the matters stated therein:

- a. the original, or photostatic copies in the custody of the United States, of all information requests issued by U.S. EPA to Settling Defendants pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and all documents submitted by Settling Defendants in response thereto; and
- b. to the extent the persons listed below are "unavailable" as witnesses, as defined under Federal Rule of Evidence 804(a), the original, or

copies in the custody of the United States, of transcriptions of the following deposition testimony, taken pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604:

- i. May 1, 1990, deposition of Dorothy Kervin Uchniat;
- ii. May 31, 1990, deposition of Gary Kervin; and
- iii. July 31, 1990, deposition of Oscar Kramer.

20. Nothing in this Section shall foreclose the Parties from pursuing any discovery otherwise available to them under the Federal Rules of Civil Procedure or from contesting the weight which should be accorded the documents identified in Paragraph 19 above.

IX. QUALITY ASSURANCE

21. Settling Defendants shall use quality assurance, quality control, and chain of custody procedures in accordance with U.S. EPA's "Interim Guidelines and Specifications For Preparing Quality Assurance Project Plans" (QAM-005/80) and subsequent amendments to such guidelines upon notification to Settling Defendants of such amendments by U.S. EPA. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, Settling Defendants shall submit Quality Assurance Project Plan(s) ("QAPP") to U.S. EPA and MDNR, consistent with the SOW and applicable guidelines, and in accordance with Paragraphs 12 and 13 of this Decree. Validated

sampling data generated consistent with the QAPP(s) and reviewed and approved by U.S. EPA shall be admissible as evidence, without objection, in any proceeding to enforce this Decree. Each laboratory utilized by Settling Defendants in implementing this Consent Decree shall be subject to approval by U.S. EPA, in consultation with MDNR. Settling Defendants shall assure that U.S. EPA and State personnel or authorized representatives are allowed access to each such laboratory. In addition, Settling Defendants shall have their laboratory analyze samples submitted by U.S. EPA for quality assurance monitoring.

X. SITE ACCESS, SAMPLING, DOCUMENT AVAILABILITY

22. Additional Easements, Deed Restrictions, Land Use Limitations or Other Use Restrictions. Settling Defendants shall timely secure all easements, deed restrictions, land-use limitations, or other enforceable instruments restricting private property use, beyond those deed restrictions secured by the United States from the Estate of Leonard Forster (attached hereto as Appendix 6), necessary to prevent interference with the implementation and completion of the Work to be performed on the Site under this Consent Decree. Settling Defendants shall file, with the Register of Deeds office in Macomb County, each additional instrument executed pursuant to this Subparagraph within five (5) business days of its execution.

23. Access to Site and Other Property Controlled by Settling Defendants. As of the date of lodging of this Consent Decree, the United States, the State, and Settling Defendants'

contractors shall have access at all times to those portions of the Site owned by the Estate of Leonard Forster in accordance with the Consent for Access executed by the Estate of Leonard Forster and attached hereto as Appendix 7, and shall have access to any other property controlled by, or available to, Settling Defendants to which access is necessary to effectuate the remedial design or remedial action required pursuant this Decree. Access shall be allowed for the purposes of conducting activities related to this Decree, including, but not limited to:

- a. Monitoring the Work or any other activities taking place at the Site;
- b. Verifying any data or information submitted to the United States;
- c. Conducting investigations relating to contamination at or near the Site;
- d. Obtaining samples;
- e. Assessing the need for, planning, or implementing additional response actions at or near the Site;
- f. Inspecting and copying records, operating logs, contracts or other documents maintained or generated by Settling Defendants or their agents, consistent with this Decree and applicable law; or
- g. Assessing Settling Defendants' compliance with this Consent Decree.

24. Access to Other Property. To the extent that the Site or other areas where Work is to be performed hereunder is

presently owned by persons other than Settling Defendants, Settling Defendants shall use their best efforts to secure from such persons access for Settling Defendants' contractors, the United States, the State, and their authorized representatives, as necessary to effectuate this Consent Decree. If access is not obtained, despite best efforts, within 30 days of the date of entry of this Decree, Settling Defendants shall promptly notify the United States. The United States, thereafter, may assist Settling Defendants in obtaining access, to the extent necessary to effectuate the remedial action for the Site, using such means as the United States deems appropriate. The United States' costs in this effort, including attorney's fees and other expenses and any compensation that the United States may be required to pay to the property owner, shall be considered Future Response Costs and shall be reimbursed by Settling Defendants in accordance with Section XVI of this Decree (Reimbursement).

25. Access Authority Retained. Nothing herein shall restrict in any way the United States' access authorities and rights under CERCLA, RCRA or any other applicable statute, regulation or permit.

26. Sampling Availability. Settling Defendants shall make available to U.S. EPA and MDNR the results of all sampling and/or tests or other data generated by Settling Defendants with respect to the implementation of this Consent Decree. U.S. EPA shall make available to Settling Defendants the results of sampling

and/or tests or other data generated by U.S. EPA, its contractors or the State (to the extent provided to U.S. EPA).

27. Split Samples. Upon request, a party taking samples shall allow other parties and/or their authorized representatives to take split or duplicate samples. The party taking samples shall give at least 14 days notice of sample collection activity to the other parties.

XI. REPORTING REQUIREMENTS

28. Progress Reports. Settling Defendants shall prepare and provide to U.S. EPA and MDNR written monthly progress reports which: (1) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month, and attach copies of appropriate supporting documentation such as invoices, contract documents and photographs; (2) include all results of sampling and tests and all other data received by Settling Defendants during the course of the work which has passed quality assurance and quality control procedures; (3) include all plans and procedures completed under the RD/RA Work Plan during the previous month; (4) describe all actions, data and plans which are scheduled for the next month and provide other information relating to the progress of construction; (5) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Scope of Work or RD/RA Work Plan, and a description of efforts made to mitigate those delays or anticipated delays. Settling Defendants shall submit

these progress reports to U.S. EPA and MDNR by the tenth business day of every month following the effective date of this Consent Decree until U.S. EPA has determined, after its final inspection pursuant to Section III, Task 3.C(3) of the SOW, and in consultation with MDNR, that RD/RA construction work has been performed in accordance with all U.S. EPA-approved work plans. For the Work required to be performed thereafter under this Decree, Settling Defendants may replace the monthly reports with quarterly reports. Such reports shall be submitted to U.S. EPA and MDNR by the tenth business day following the beginning of each quarter as measured by the calendar year.

29. Other Reporting Requirements. Settling Defendants shall submit reports, plans and data required by the SOW, the RD Work Plan, the RD/RA Work Plan or other approved plans in accordance with the schedules set forth in such plans.

30. Reports of Releases. Upon the occurrence of any event during performance of the Work which, pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, requires reporting to the National Response Center, Settling Defendants shall promptly orally notify the U.S. EPA Remedial Project Manager ("RPM") or On-Scene Coordinator ("OSC"), or in the event of the unavailability of the U.S. EPA RPM or OSC, the Emergency Response Section of U.S. EPA, Region V, in addition to the reporting required by Section 103. Within 20 days of the onset of such an event, Settling Defendants shall furnish to U.S. EPA and MDNR a written report setting forth the events which occurred and the measures taken, and to be

taken, in response thereto. Within 30 days of the conclusion of such an event, Settling Defendants shall submit a written report to U.S. EPA and MDNR setting forth all actions taken to respond thereto.

31. Annual Report. Settling Defendants shall submit each year, within forty-five (45) days of the anniversary of the entry of the Consent Decree, a report to the Court and the Parties setting forth the status of response actions at the Site, which shall include at a minimum a statement of major milestones accomplished in the preceding year, a statement of tasks remaining to be accomplished, and the schedule for implementation of the remaining Work.

XII. REMEDIAL PROJECT MANAGER/PROJECT COORDINATORS

32. Designation/Powers. U.S. EPA shall designate a Remedial Project Manager and/or an On-Scene Coordinator for the Site. U.S. EPA also may designate other representatives, including U.S. EPA employees and federal representatives and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. The RPM/OSC shall have the authority lawfully vested in an RPM/OSC by the National Contingency Plan, 40 C.F.R. Part 300. In addition, the RPM/OSC shall have the authority to halt any work required by this Consent Decree and to take any necessary response action when conditions at the Site may present an imminent and substantial endangerment to public health or welfare or the environment. Settling Defendants also shall designate a Project Coordinator

who shall have primary responsibility for implementation of the Work at the Site.

33. Communications. To the maximum extent possible, except as specifically provided in the Consent Decree, communications between Settling Defendants and U.S. EPA concerning the implementation of the Work under this Consent Decree shall be made between Settling Defendants' Project Coordinator and the RPM/OSC.

34. Identification of Personnel. Within thirty (30) calendar days of the lodging of this Consent Decree, Settling Defendants and U.S. EPA shall notify each other, in writing, of the name, address and telephone number of the designated Project Coordinator and an Alternate Project Coordinator, and the RPM/OSC and Alternate RPM/OSC. If the identity of any these persons changes, notice shall be given to the other parties at least five (5) business days before the changes become effective.

XIII. FORCE MAJEURE

35. Definition. "Force Majeure" for purposes of this Consent Decree is defined as any event arising from causes beyond the control of Settling Defendants which delays or prevents the performance of any obligation under this Consent Decree, notwithstanding Settling Defendants' best efforts to avoid the delay. Increased costs or expenses or non-attainment of the Performance or Cleanup Standards shall not constitute "force majeure" events.

36. Notice to RPM Required. When circumstances occur which may delay the completion of any phase of the Work or delay access to the Site or to any property on which any part of the Work is to be performed, whether or not caused by a "force majeure" event, Settling Defendants shall promptly notify by telephone the U.S. EPA RPM or OSC (or in the event of their unavailability, the Director of the Waste Management Division of U.S. EPA, Region V), and the MDNR contact identified in Paragraph 81. Within twenty (20) days of the event which Settling Defendants contend is responsible for the delay, Settling Defendants shall supply to U.S. EPA and MDNR, in writing, the reason(s) for and anticipated duration of such delay, the measures taken and to be taken by Settling Defendants to prevent or minimize the delay, and the timetable for implementation of such measures. Failure to give such oral notice and written explanation in a timely manner shall constitute a waiver of any claim of force majeure.

37. If U.S. EPA agrees that a delay is or was attributable to a "force majeure" event, the Parties shall modify the SOW or RD/RA Work Plan to provide such additional time as may be necessary to allow the completion of the specific phase of Work and/or any succeeding phase of the Work affected by such delay.

38. If U.S. EPA does not agree with Settling Defendants, that the reason for the delay was a "force majeure" event, that the duration of the delay is or was warranted under the circumstances, or that the length of additional time requested by Settling Defendants for completion of the delayed work is

necessary, U.S. EPA shall so notify Settling Defendants in writing. If Settling Defendants wish to contest an informal dispute determination by U.S. EPA, Settling Defendants shall initiate a formal dispute resolution proceeding under Paragraphs 40 and 41 of this Decree no later than 15 days after the receipt of such notice. In such a proceeding, Settling Defendants have the burden of proving that the event was a force majeure, that best efforts were exercised to avoid and mitigate the effects of the delay, that the duration of the delay is or was warranted, that the additional time requested for completion of the Work involved is necessary to compensate for the delay, and that the notice provisions of Paragraph 36 of this Decree were complied with.

XIV. DISPUTE RESOLUTION

39. The Parties to this Consent Decree shall attempt to resolve expeditiously any disagreements concerning the meaning, application or implementation of this Consent Decree. Any party seeking dispute resolution first shall provide the other parties with an "Informal Notice of Dispute", in writing, and request an informal dispute resolution period, which shall not exceed thirty (30) days unless extended by written agreement of the Parties.

40. If the dispute is not resolved within the informal discussion period, any party may initiate formal dispute resolution by giving a written "Formal Notice of Dispute" to the other parties no later than the 15th day following the informal dispute resolution period. A party shall seek formal dispute

resolution prior to the expiration of the informal discussion period where the circumstances require prompt resolution.

41. Formal dispute resolution for disputes pertaining to the selection or adequacy of remedial design or remedial action (including the selection and adequacy of any plans which are required to be submitted for government approval under this Decree and the adequacy of Work performed) shall be conducted according to the following procedures:

- a. Within ten (10) business days of the service of the Formal Notice of Dispute pursuant to the preceding Paragraph, or such other time as may be agreed to by the Parties, the party who gave the notice shall serve on the other parties to this Decree a written statement of the issues in dispute, the relevant facts upon which the dispute is based, and factual data, analysis or opinion supporting its position (hereinafter the "Statement of Position"), and shall provide copies of all supporting documentation on which such party relies.
- b. Opposing parties shall serve their Statements of Position and copies of supporting documentation within twenty (20) days after receipt of the complaining party's Statement of Position or such other time as may be agreed to by the Parties.
- c. U.S. EPA shall maintain an administrative record of any dispute governed by this Paragraph. The record shall

include the Formal Notice of Dispute, the Statements of Position, all supporting documentation submitted by the parties, and any other material on which the U.S. EPA decision maker relies for the administrative decision provided for below. The record shall be available for inspection and copying by all parties. The record shall be closed no less than ten (10) days before the administrative decision is made, and U.S. EPA shall give all Parties prior notice of the date on which the record will close.

- d. Upon review of the administrative record, U.S. EPA shall issue a final decision and order resolving the dispute.
- e. Any decision and order of U.S. EPA pursuant to Subparagraph d of this Paragraph shall be reviewable by this Court, provided that a Notice of Judicial Appeal is filed within 20 business days of receipt of U.S. EPA's decision and order. Judicial review will be conducted on U.S. EPA's administrative record and U.S. EPA's decision shall be upheld unless it is demonstrated to be arbitrary and capricious or in violation of law.

42. Judicial dispute resolution for any issues not governed by the preceding Paragraph may be initiated by petition to the Court after compliance with Paragraph 39 of this Decree, and shall be governed by the Federal Rules of Civil Procedure.

Except as specifically provided in other provisions of this Decree, e.g., Section XIII (Force Majeure), this Decree does not establish procedures or burdens of proof or standards of review for such dispute resolution proceedings.

43. The invocation of the procedures stated in this Section shall not extend or postpone Settling Defendants' obligations under this Consent Decree with respect to the disputed issue unless and until U.S. EPA agrees otherwise. U.S. EPA's position on an issue in dispute shall control until such time as the Court orders otherwise in accordance with the provisions of this Section.

44. Any applicable stipulated penalties continue to accrue during dispute resolution, as provided in Section XVII (Stipulated Penalties) herein. Settling Defendants may seek forgiveness of stipulated penalties that accrue during dispute resolution by petition to U.S. EPA or the Court pursuant to Paragraph 64 of the Consent Decree.

45. Upon the conclusion of any formal or informal dispute resolution under this Section, which has the effect of nullifying or altering any provision of the RD/RA Work Plan or any other plan or document submitted and approved pursuant to this Decree, Settling Defendants shall submit an amended plan, in accordance with the decision, to U.S. EPA within thirty days (30) days of receipt of the final order or decision. Amendments of the SOW, as a result of dispute resolution proceedings, are governed by Section VII (Additional Work and Modification of the SOW) of this

Decree. Amendments of a plan or other document as a result of dispute resolution shall not alter any dates for performance unless such dates have been specifically changed by the order or decision. Extension of one or more dates of performance in the order or decision does not extend subsequent dates of performance for related or unrelated items of Work unless the order or decision expressly so provides or the Parties so agree.

XV. RETENTION AND AVAILABILITY OF INFORMATION

46. Settling Defendants shall make available to U.S. EPA and MDNR and shall retain the following documents until six (6) years following the third periodic review (or the final review, if there are fewer than three reviews), conducted for the Site pursuant to Section 121(c) of CERCLA and Section VIII of this Decree: (a) all records and documents in their possession, custody, or control which relate to the performance of this Consent Decree, including, but not limited to, documents reflecting the results of any sampling, tests, or other data or information generated or acquired by any of them, or on their behalf, with respect to the Site; and (b) all documents pertaining to their own or any other person's liability for response action or costs under CERCLA. After this period of document retention, Settling Defendants shall notify U.S. DOJ, U.S. EPA, and MDNR at least ninety (90) calendar days prior to the destruction of any such documents. Upon request by the United States, Settling Defendants shall relinquish custody of the documents to U.S. DOJ, U.S. EPA and/or MDNR.

47. Settling Defendants may assert business confidentiality claims covering part or all of the information provided in connection with this Consent Decree in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and pursuant to 40 C.F.R. § 2.203(b) and applicable State law. Information determined to be confidential by U.S. EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is submitted to U.S. EPA and the State, the public may be given access to such information without further notice to Settling Defendants.

48. Information acquired or generated by Settling Defendants in performance of the Work that is subject to the provisions of Section 104(e)(7)(F) of CERCLA, 42 U.S.C. § 9604(e)(7)(F), shall not be claimed as confidential by Settling Defendants.

49. In the event that Settling Defendants' obligation to produce documents under this Section includes documents which are privileged from disclosure as attorney-client communications, attorney work-product or under any other privilege recognized by law, Settling Defendants may seek to withhold production of such documents to avoid improper disclosure. At the time production is requested, Settling Defendants must provide the United States and the State with all information necessary to determine whether the document is privileged, including such information as is generally required under the Federal Rules of Civil Procedure. If the United States does not agree with the Settling Defendant's

claim of privilege, Settling Defendants may seek protection of the documents from the Court. Settling Defendants shall not withhold as privileged any information or documents that are created, generated or collected pursuant to requirements of this Decree, regardless of whether the document has been generated in the form of an attorney-client communication or other generally privileged manner. Settling Defendants may not withhold as privileged any documents that are subject to the public disclosure provision of Section 104(e)(7)(F) of CERCLA, 42 U.S.C. § 9604(e)(7)(F).

XVI. REIMBURSEMENT

50. Within sixty (60) days of the entry of this Consent Decree, Settling Defendants shall pay to the United States \$2.6 million, in reimbursement of Past Response Costs, by Electronic Funds Transfer ("EFT" or "wire transfer") to the U.S. Department of Justice lockbox bank, referencing the CERCLA Number TJB0573470 and the United States Attorney's Office file number. Payment shall be made in accordance with instructions to be provided by the United States to Settling Defendants upon execution of the Consent Decree. Any EFTs received at the U.S. Department of Justice lockbox after 11:00 a.m. (Eastern Time) will be credited on the next business day.

51. Settling Defendants shall reimburse the United States for all Future Response Costs not inconsistent with the NCP incurred by the United States. Settling Defendants shall make all payments for Future Response Costs in the form of a certified

check or checks made payable to "EPA Hazardous Substance Superfund" and delivered to U.S. EPA, Superfund Accounting, P.O. Box 70753, Chicago, Illinois 60673, and referencing CERCLA Number TJB0573470 and U.S. DOJ Case Number 90-11-3-171B. Settling Defendants shall send copies of all certified checks to the United States as specified in Section XXII (Notices).

52. The United States shall submit its invoice for Future Response Costs incurred up to the date of entry of the Decree, including cost documentation in the form of a Cost Summary Report or its future equivalent, as soon as practicable after entry of the Decree. Additional invoices for Future Response Costs shall be submitted periodically by U.S. EPA, as practicable, and shall include cost documentation in the form of a Cost Summary Report or its future equivalent. Payments shall be made, as specified in Paragraph 51 above, within 60 days of the submission to Settling Defendants of the above invoices, including cost documentation in the form of a Cost Summary Report or its future equivalent.

53. Settling Defendants may contest payment of any Future Response Costs under Paragraph 51 if they allege that the United States has made an accounting error or if they allege that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 60 days of receipt of the invoice and must be sent to the United States pursuant to Section XXII (Notices). Any such objection shall specifically identify the contested Future Response Costs and the

basis for the objection. In the event of an objection, Settling Defendants shall pay all uncontested Future Response Costs to the United States in the manner prescribed in Paragraph 51. Simultaneously, Settling Defendants shall establish an interest bearing escrow account in a federally-insured bank duly chartered in the State of Michigan and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Settling Defendants shall send to the United States, as provided in Section XXII (Notices), copies of the transmittal letter, the check paying the uncontested Future Response Costs, and the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Settling Defendants shall initiate the Dispute Resolution procedures in Section XIV (Dispute Resolution). If the United States prevails in the dispute, within 15 days of the resolution of the dispute, Settling Defendants shall pay the sums due (with accrued interest) to the United States in the manner prescribed in Paragraph 51. If the Settling Defendants prevail concerning any aspect of the contested costs, Settling Defendants shall pay that portion of the costs (plus proportionate accrued interest) for which they did not prevail to the United States in the manner prescribed in Paragraph 51; Settling Defendants shall be

disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Settling Defendants' obligation to reimburse the United States for its Future Response Costs.

54. In the event that the Past Response Costs payment required by Paragraph 50 is not made within 60 days of entry of this Consent Decree, or any Future Response Costs payment, required by Paragraph 51 is not made within 60 days of the United States' submission of an uncontested invoice (including cost documentation as provided in Paragraph 52) to Settling Defendants, Settling Defendants shall pay interest on the unpaid balance at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). In the event that payment of Past Response Costs, as required by Paragraph 50, is late, the interest to be paid on Past Response Costs shall begin to accrue on the date of entry of the Consent Decree. In the event that payment of such Future Response Costs, as required by Paragraph 52, is late, the interest on Future Response Costs shall begin to accrue on the date of Settling Defendants' receipt of the invoice(s) for such costs. For any invoice(s) for Future Response Costs that are contested by Settling Defendants pursuant to Paragraph 53 of this Decree, Settling Defendants shall pay interest, at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for the time period during which

they fail to establish and maintain an interest-bearing escrow account as required by Paragraph 53. Interest shall accrue at the rate specified through the date of the Settling Defendant's payment. Payments of interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Settling Defendants' failure to make timely payments under this Section.

55. Settling Defendants may agree among themselves as to the apportionment of responsibility for the payments required by this Section, but their liability to the United States for these payments shall be joint and several,

XVII. STIPULATED PENALTIES

56. Settling Defendants shall pay stipulated penalties in the amounts set forth below to the United States for each failure to complete any of the following requirements of this Consent Decree in an acceptable manner and within the time schedules specified in the SOW, the RD Work Plan, the RD/RA Work Plan or in other plans submitted and approved under this Consent Decree:

<u>VIOLATION</u>	<u>PENALTY PER DAY</u>		
	1 TO <u>30 DAYS</u>	31 TO <u>60 DAYS</u>	OVER <u>60 DAYS</u>
Failure to submit Progress Reports pursuant to Section XI of the Consent Decree	\$ 250	\$ 500	\$ 1,000
Failure to submit the following plans:			
RD Work Plan	\$ 2,000	\$ 4,000	\$ 8,000
Groundwater Treatability Study Work Plan	\$ 2,000	\$ 4,000	\$ 8,000

Any Plan Required by Para. 12 of the Consent Decree	\$ 2,000	\$ 4,000	\$ 8,000
Failure to submit Design Plans for:			
Groundwater Extraction System	\$ 2,000	\$ 4,000	\$ 8,000
Source Containment System	\$ 2,000	\$ 4,000	\$ 8,000
Landfill Cover	\$ 2,000	\$ 4,000	\$ 8,000
Groundwater Monitoring System	\$ 2,000	\$ 4,000	\$ 8,000
Failure to complete the following actions:			
(1) Performance of Treatability Study	\$ 2,000	\$ 4,000	\$ 8,000
(2) Construction and Operation of the Source Containment System	\$ 2,000	\$ 4,000	\$ 8,000
(3) Construction and Operation of the Groundwater Collection and Treatment Systems	\$ 2,000	\$ 4,000	\$ 8,000
(4) Construction of the Landfill Cover	\$ 2,000	\$ 4,000	\$ 8,000
(5) Implementation of the Groundwater Monitoring System	\$ 2,000	\$ 4,000	\$ 8,000
Failure to comply with Effluent Limitations, and Monitoring and Reporting Requirements Applicable to Discharges from Groundwater Treatment System	\$ 2,000	\$ 4,000	\$ 8,000
Failure to Comply with Notice or Other Requirements of the Following Sections of the Consent Decree: III, V, VI, VII, X, XII, and XIII	\$ 250	\$ 500	\$ 1,000

Failure to take action
to abate an endangerment
under Section XXIV of the
Consent Decree:

\$ 2,000 \$ 3,000 \$ 6,000

57. All penalties begin to accrue on the day after complete performance is due or the day a violation occurs, and continue to accrue through the final day of correction of the noncompliance or completion of performance. Any modifications of the time for performance shall be in writing and approved by U.S. EPA. ,
Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

58. Following U.S. EPA's determination that Settling Defendants have failed to comply with the requirements of this Consent Decree, U.S. EPA shall give Settling Defendants written notification of the same and describe the non-compliance. This notice shall also indicate the amount of penalties due. However, penalties shall accrue, as provided in the preceding Paragraph, regardless of whether U.S. EPA has notified Settling Defendants of a violation.

59. All penalties owed to the United States under this Section shall be payable within 30 days of receipt of the notification of non-compliance, unless Settling Defendants invoke the dispute resolution procedures under Section XIV (Dispute Resolution).

60. Settling Defendants may dispute the United States' right to the stated amount of penalties on the grounds that no violation occurred, that the violation is excused by the Force

Majeure provisions in Section XIII of this Decree, or that it is based on a mistake of fact. The dispute resolution procedures in Section XIV shall be followed for such a dispute.

61. Neither the filing of a petition to resolve a dispute, nor the payment of penalties, shall alter in any way Settling Defendants' obligation to continue and complete the performance required hereunder.

62. Penalties shall continue to accrue as provided in Paragraph 57 of the Consent Decree during the dispute resolution period, but need not be paid until the following decision points:

- a. If the dispute is resolved by agreement or by decision or order of U.S. EPA which is not appealed to this Court, Settling Defendants shall pay accrued penalties to the United States within thirty (30) days of the agreement or the receipt of U.S. EPA's decision or order;
- b. If the dispute is appealed to this Court, Settling Defendants shall pay accrued penalties to the United States within fifteen (15) days of receipt of the Court's decision or order, except as provided in Subparagraph c below;
- c. If the District Court's decision is appealed by any Party, Settling Defendants shall pay all accrued penalties into an interest-bearing escrow account within thirty (30) days of receipt of the Court's decision or order. Penalties shall be

paid into this account as they continue to accrue, at least every sixty (60) days. Within fifteen (15) days of receipt of the appellate court decision, the escrow agent shall pay the balance of the account to the United States or to Settling Defendants, to the extent that they prevail, as determined pursuant to the following Paragraph.

63. Settling Defendants shall not owe stipulated penalties for any items upon which they prevail in dispute resolution. Settling Defendants shall request a specific determination at each stage of dispute resolution as to the issues and items upon which they have prevailed and as to the amount of any stipulated penalties owed.

64. Notwithstanding the above provisions, Settling Defendants shall have the right to petition the Court or U.S. EPA (according to the level of dispute resolution reached) for forgiveness of stipulated penalties that accrue during dispute resolution for items upon which they did not prevail, based on a finding (1) that the delay in work or other violation that caused the stipulated penalty to accrue was necessary and appropriate during the dispute resolution proceeding; (2) that Settling Defendants' position regarding the dispute had substantial support in law and fact and reasonably could have been expected to prevail, considering the applicable standard of review; and (3) that Settling Defendants sought dispute resolution expeditiously and took all other appropriate steps to avoid any

delay in remedial action work as a result of the dispute. The Court or U.S. EPA may grant an appropriate reduction or waiver in the stipulated penalties that accrued during the dispute resolution period. Settling Defendants shall have the burdens of proof and persuasion on any petition submitted under this provision.

65. Interest shall begin to accrue on the unpaid balance of stipulated penalties on the day following the date payment is due. Pursuant to 31 U.S.C. § 3717, interest shall accrue on any amounts overdue at a rate established by the Department of Treasury for any period after the date of billing. A six percent per annum penalty charge will be assessed if the penalty is not paid within 90 days of the due date. Stipulated penalties and any interest due under this Paragraph shall be paid as specified in Paragraph 51 of this Decree.

66. If Settling Defendants fail to pay stipulated penalties, the United States may institute proceedings to collect the penalties. In any such proceeding, penalties shall be paid as provided in Paragraph 51 of this Decree.

67. Notwithstanding any of the above provisions, the United States may elect to assess civil penalties and/or to bring an action in U.S. District Court pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, to enforce the provisions of this Consent Decree. Payment of stipulated penalties shall not preclude the United States from electing to pursue any other remedy or sanction to enforce this Consent Decree, and nothing shall

preclude the United States from seeking statutory penalties against Settling Defendants for violations of statutory or regulatory requirements.

XVIII. COVENANT NOT TO SUE

68. Except as otherwise specifically provided in the following Paragraph or elsewhere in this Decree, the United States covenants not to sue Settling Defendants for Covered Matters. Covered Matters shall mean any and all claims or administrative actions available to the United States under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, and Section 7003 of RCRA, 42 U.S.C. § 6973, relating to the Site, including performance of the Work, payment of Past Response Costs and Future Response Costs pursuant to Section XVI (Reimbursement) of this Decree, and payment of interest thereon pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a). With respect to future liability, this covenant not to sue shall take effect upon certification by U.S. EPA of the completion of the remedial action concerning the Site pursuant to Section XXVII (Effective Date and Certification of Completion of Remedy) of this Decree.

69. "Covered Matters" does not include:

- a. Liability arising from hazardous substances removed from the Site;
- b. Liability for natural resource damages;
- c. Criminal liability;
- d. Claims based on a failure by Settling Defendants to meet the requirements of this Consent Decree;

- e. Any matters for which the United States is owed indemnification under Section XIX (Indemnification) hereof; or
- f. Liability for violations of federal or State law which occur during implementation of the Work.

70. Notwithstanding any other provision in this Consent Decree, (1) the United States reserves the right to institute proceedings in this action or in a new action or to issue an Order seeking to compel Settling Defendants to perform any additional response action at the Site, and (2) the United States reserves the right to institute proceedings in this action or in a new action seeking to reimburse the United States for such additional response costs under CERCLA relating to the Site if:

- a. for proceedings prior to U.S. EPA certification of completion of the remedial action concerning the Site pursuant to Section XXVII of this Decree,
 - (i) conditions at the Site, previously unknown to the United States, are discovered after the entry of this Consent Decree, or
 - (ii) information is received, in whole or in part, after the entry of this Consent Decree, and these previously unknown conditions or this information indicates that the remedial action is not protective of human health and the environment; and
- b. for proceedings subsequent to U.S. EPA certification of completion of the remedial action

concerning the Site pursuant to Section XXVII of this Decree,

(i) conditions at the Site, previously unknown to the United States, are discovered after the certification of completion by U.S. EPA, or

(ii) information is received, in whole or in part, after the certification of completion by U.S. EPA,

and these previously unknown conditions or this information indicates that the remedial action is not protective of human health and the environment.

71. For purposes of Subparagraph a of the preceding Paragraph, the information received by and the conditions known to the United States are that information and those conditions set forth in the ROD attached as Appendix 2 hereto or in documents contained in U.S. EPA's administrative record supporting the ROD. For purposes of Subparagraph b of the preceding Paragraph, the information received by and the conditions known to the United States are that information and those conditions set forth in the ROD, the administrative record supporting the ROD, or in reports or other documents submitted to U.S. EPA pursuant to this Consent Decree or generated by U.S. EPA in overseeing this Consent Decree prior to certification of completion of the remedial action pursuant to Section XXVII of the Decree.

72. Notwithstanding any other provisions in this Consent Decree, the covenant not to sue in this Section shall not relieve Settling Defendants of their obligation to meet and maintain

compliance with the requirements set forth in this Consent Decree, including the conditions in the ROD (as modified by the ESD) and in the SOW, which are incorporated herein, and the United States reserves its rights to take response actions at the Site in the event of a breach of the terms of this Consent Decree and to seek recovery of costs incurred after entry of the Consent Decree: 1) resulting from such a breach; 2) relating to any portion of the Work funded or performed by the United States; or 3) incurred by the United States as a result of having to seek judicial assistance to remedy conditions at, or adjacent to, the Site.

73. Settling Defendants hereby release and waive any rights to assert any claims against the United States, or any agency of the United States, relating to the Site or the Work required under this Consent Decree. However, Settling Defendants reserve, and this Consent Decree is without prejudice to, actions against the United States (not including Oversight or approval of Settling Defendants plans or activities) that are brought pursuant to any statute other than CERCLA, and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

74. Nothing in this Consent Decree shall constitute, or be construed as, a release or a covenant not to sue regarding any claim or cause of action against any person, firm, trust, joint venture, partnership, corporation or other entity not a signatory to this Consent Decree for any liability it may have arising out

of or relating to the Site. The United States expressly reserves the right to sue any person, other than Settling Defendants, in connection with the Site.

XIX. INDEMNIFICATION; OTHER CLAIMS

75. Settling Defendants agree to indemnify, save and hold harmless the United States, and/or its representatives from any and all claims or causes of action arising from the acts or omissions of Settling Defendants and/or their representatives, including contractors and subcontractors, in carrying out the activities pursuant to this Consent Decree. The United States shall notify Settling Defendants of any such claims or actions promptly after receipt of notice that such a claim or action is anticipated or has been filed.

76. The United States does not assume any liability of Settling Defendants by virtue of entering into this agreement or by virtue of any designation that may be made of Settling Defendants as U.S. EPA's representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), for purposes of carrying out this Consent Decree. The United States is not to be construed as a party to any contract entered into by Settling Defendants in carrying out the activities pursuant to this Consent Decree. The proper completion of the Work under this Consent Decree is solely the responsibility of Settling Defendants.

77. Settling Defendants waive their rights to assert any claims against the Hazardous Substances Superfund under CERCLA that are related to any costs incurred in performing the Work

pursuant to this Consent Decree, and nothing in this Consent Decree shall be construed as U.S. EPA's preauthorization of a claim against the Superfund.

XX. CONTRIBUTION PROTECTION

78. With regard to claims for contribution against Settling Defendants for matters addressed in this Consent Decree, the Parties agree that Settling Defendants are entitled, as of the effective date of this Consent Decree, to such protection from contribution actions or claims as is provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2).

79. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Decree. The preceding shall not be construed to waive or nullify any rights that any person, not a signatory to this Consent Decree may have under applicable law. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a party hereto.

XXI. INSURANCE/FINANCIAL RESPONSIBILITY

80. Settling Defendants shall purchase and maintain in force for the duration of the Work, comprehensive general liability and automobile insurance with limits of \$2 million, combined single limit, naming the United States or U.S. EPA as an

additional insured. In addition, for the duration of this Consent Decree, Settling Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing work on behalf of Settling Defendants in furtherance of this Consent Decree. Prior to commencement of the Work at the Site, Settling Defendants shall provide U.S. EPA with a certificate or certificates of insurance and a copy of each insurance policy. If Settling Defendants demonstrate by evidence satisfactory to the United States that any contractor or subcontractor provides the required insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then with respect to that contractor or subcontractor Settling Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor. It is agreed that the required insurance may be supplied by an endorsement to an existing policy, including, without limitation, a blanket policy.

81. Settling Defendants shall provide financial security in the amount of \$40 million in one of the forms permitted under 40 C.F.R. § 264.145, including the form of audited financial statements which satisfy the substantive criteria thereof, to assure completion of the Work at the Site.

82. Whenever, under the terms of this Consent Decree, notice is required to be given, a report or other document is required to be forwarded by one party to another, or service of any papers or process is necessitated by the dispute resolution provisions of Section XIV (Dispute Resolution) hereof, such correspondence shall be directed to the following individuals at the addresses specified below:

As to the United States or
U.S. EPA:

- a. Regional Counsel
Attn: Laurie J. Adams
Assistant Regional Counsel
(CS-3T)
U.S. Environmental
Protection Agency
77 W. Jackson Blvd.
Chicago, Illinois 60604-3590
- b. Director, Waste Management
Division
Attn: Kevin Adler, Remedial
Project Manager
(HSRW-6J)
U.S. Environmental Protection
Agency
77 W. Jackson Blvd.
Chicago, Illinois 60604-3590
- c. Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
Ref. D.J. #90-11-3-171B

As to the State of Michigan

- a. Attorney General
State of Michigan
Attn: Jeremy Firestone
525 West Ottawa
Law Building
Lansing, MI 48913
- b. Director, Michigan Dept.
of Natural Resources
Attn. Lisa Summerfield
P.O. Box 30028
Lansing, Michigan 48909

As to Settling Defendants:

- a. Keith Lerminiaux, Esq.
Dickinson, Wright, Moon
Van Dusen, & Freeman
800 First National Building
Detroit, Michigan 48226-3555
- b. David Tripp, Esq.
Dykema Gossett
400 Renaissance Center
35th floor
Detroit, Michigan 48243
- c. Alan Van Norman
Conestoga-Rovers and Associates
651 Coby Drive
Waterloo, Ontario
Canada N2V 1C2

XXIII. CONSISTENCY WITH NATIONAL CONTINGENCY PLAN

83. The United States agrees that the Work and additional work, if any, if properly performed, is consistent with the provisions of CERCLA and the National Contingency Plan.

XXIV. ENDANGERMENT AND EMERGENCY RESPONSE

84. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of a hazardous substance into the environment which presents or may present an imminent and substantial endangerment to public health or welfare or the environment, Settling Defendants shall immediately take all appropriate action to prevent, abate, or minimize such release and endangerment, and shall immediately notify the U.S. EPA RPM/OSC or, if the RPM/OSC is unavailable, the U.S. EPA Emergency Response Section, Region V. Settling Defendants shall take such action in accordance with all applicable provisions of the Health and Safety Plan developed pursuant to the SOW and approved by U.S. EPA. In the event that Settling Defendants fail to take appropriate response action as required by this Paragraph and U.S. EPA takes such action instead, Settling Defendants shall reimburse all costs of the

response action not inconsistent with the NCP. Payment of such response costs shall be made in the manner provided in Section XVI (Reimbursement) hereof.

85. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit the response authority of the United States under Section 104 of CERCLA, 42 U.S.C. § 9604.

XXV. COMMUNITY RELATIONS

86. Settling Defendants shall cooperate with U.S. EPA and the State in providing information regarding the progress of remedial design and remedial action at the Site to the public. As requested by U.S. EPA or the State, Settling Defendants shall participate in the preparation of all appropriate information disseminated to the public and in public meetings which may be held or sponsored by U.S. EPA or the State to explain activities at or concerning the Site.

XXVI. RETENTION OF JURISDICTION; MODIFICATION

87. Retention of Jurisdiction. This Court will retain jurisdiction for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, or relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XIV hereof.

88. Modification. No material modification shall be made to this Consent Decree without written notification to, and written approval of, the Parties and the Court except as provided

below or in Section VII (Additional Work and Modification of the SOW). The notification required by this Section shall set forth the nature of, and reasons for, any requested modification. No oral modification of this Consent Decree shall be effective. Nothing in this Paragraph shall be deemed to alter the Court's power to supervise or modify this Consent Decree.

XXVII. EFFECTIVE DATE AND CERTIFICATION OF COMPLETION OF REMEDY

89. This Consent Decree shall be effective upon the date of its entry by the Court, except to the extent provided in Section II.A of the SOW regarding the demolition of existing structures on the landfill property along 23-Mile Road, Section II.C of the SOW regarding sampling of the Junkyard area, and Paragraph 12 of this Decree regarding the commencement of remedial design upon lodging.

90. Certification of Completion of Remedial Action.

a. Application. When Settling Defendants believe that installation of the multi-layer cap, slurry wall, source containment system and groundwater extraction, treatment, and discharge systems have been completed, municipal water supply hookups have been made, PCB-soils and sediments have been remediated, and that the demonstration of compliance with Cleanup and Performance Standards has been made in accordance with this Consent Decree, they shall submit to the United States a Notification of Completion of Remedial Action and a final report which summarizes the Work done, any modification made to the SOW or Work Plan(s) thereunder relating to the Cleanup and

Performance Standards, and data demonstrating that the Cleanup and Performance Standards have been achieved, unless such Cleanup Standards have been waived pursuant to Paragraph 11.b of this Decree (Technical Impracticability). The report shall be prepared and certified as true and accurate by a registered professional engineer and Settling Defendants' Project Coordinator, and shall include appropriate supporting documentation.

b. Certification. Upon receipt of the Notice of Completion of Remedial Action, U.S. EPA shall review the final report and supporting documentation, and the remedial action taken. U.S. EPA shall issue a Certification of Completion of Remedial Action upon a determination that Settling Defendants (1) have completed the tasks specified in Subparagraph a of this Paragraph; (2) have operated the groundwater extraction and treatment systems in accordance with the terms of this Consent Decree; and (3) have demonstrated compliance with Cleanup and Performance Standards and that no further corrective action is required under this Decree.

c. Post-Certification Obligations. Following Certification pursuant to Subparagraph b, Settling Defendants shall continue to perform the following Work: Cap and slurry wall maintenance, groundwater monitoring, and leachate collection and treatment as described in the ROD (as modified by the ESD) and in accordance with the SOW.

91. Effect of Settlement.

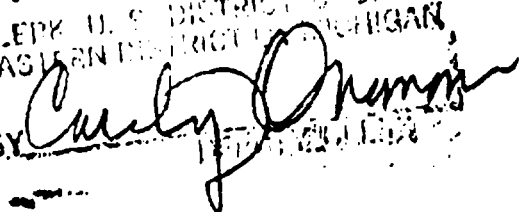
62

a. The entry of this Consent Decree shall not be construed to be an acknowledgment by the Parties that the release or threatened release concerned constitutes an imminent and substantial endangerment to the public health or welfare or the environment. The participation by any Party in this Decree shall not be considered an admission of liability for any purpose, and the fact of such participation shall not be admissible in any judicial or administrative proceeding, except a proceeding to enforce this Decree.

b. Settling Defendants that have entered into this Consent Decree do not admit any liability arising out of the transactions or occurrences alleged in the complaint.

ENTERED this 30th day of June, 1993.


U.S. District Judge

A TRUE COPY
CLERK U.S. DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
BY 

The parties whose signatures appear below hereby consent to the terms of this Consent Decree. The consent of the United States is subject to the public notice and comment requirements of Section 122(i) of CERCLA, 42 U.S.C. § 9622(i), and 28 C.F.R. § 50.7.

UNITED STATES OF AMERICA:

By:

Vicki O'Meara
 VICKI A. O'MEARA
 Acting Assistant Attorney General
 Environment and Natural Resources
 Division
 U.S. Department of Justice
 10th and Pennsylvania Avenue, N.W.
 Washington, D.C. 20530

Date:

9/9/92

Valdas V. Adamkus
 VALDAS V. ADAMKUS
 Regional Administrator
 U.S. Environmental Protection Agency
 Region V
 Chicago, Illinois 60604-3590

Date:

June 30, 1992

Thomas M. Giller
 THOMAS M. GILLER
 Attorney
 Environmental Enforcement Section
 U.S. Department of Justice
 c/o U.S. EPA, Region V [C-3T]
 77 West Jackson Boulevard
 Chicago, Illinois 60604-3590

Date:

9/9/92

STEPHEN J. MARKMAN
 United States Attorney
 Eastern District of Michigan

By:

Stephen J. Markman (per)

Date:

9/10/92

Assistant U.S. Attorney
 817 Federal Building
 231 West Lafayette
 Detroit, Michigan 48226

OF COUNSEL:

Laurie J. Adams
Assistant Regional Counsel
U.S. Environmental Protection
Agency, Region V
CS-3T
77 West Jackson Blvd.
Chicago, IL 60604-3590

The undersigned Settling Defendant* hereby consents to the foregoing Consent in U.S. v. Browning-Ferris Industries, Inc., et al.

6/10/92
Date

Browning-Ferris Industries, Inc. **
NAME OF SETTLING DEFENDANT
P. O. Box 3151, Houston, TX 77253 or
757 N. Eldridge, Houston, TX 77079
Address

By: Gerald K. Burger
Name of Officer


(Signature of Officer)

Vice President
Title

(Corporate Acknowledgement)

If different from above, the following is the name and address of this Settling Defendant's agent for service of process:

Michael L. Miller
Name

757 North Eldridge, Houston, TX 77079
Address

Prior Notice to all parties shall be provided by Settling Defendant of any change in the identity or address of the Settling Defendant or its agent for service of process.

* A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

** For itself and as alleged corporate successor to Modern Waste Removal, Inc., and Active Disposal Company.

The undersigned Settling Defendant* hereby consents to the foregoing Consent in U.S. v. Browning-Ferris Industries, Inc., et al.

6/10/92
Date

Browning-Ferris Industries of Michigan, Inc. **
NAME OF SETTLING DEFENDANT

5400 Cogswell Road, Wayne, MI 48184
Address

By: Gerald K. Burger
Name of Officer


(Signature of Officer)

Vice President

Title

(Corporate Acknowledgement)

If different from above, the following is the name and address of this Settling Defendant's agent for service of process:

Michael L. Miller
Name

757 North Eldridge, Houston, TX 77079
Address

Prior Notice to all parties shall be provided by Settling Defendant of any change in the identity or address of the Settling Defendant or its agent for service of process.

* A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

** For itself and as alleged corporate successor to A. N. Reitzloff Company and Reitzloff Rubbish Removal, Inc.

The undersigned Settling Defendant* hereby consents to the foregoing Consent in U.S. v. Browning-Ferris Industries, Inc., et al.

6/10/92
Date

BFI of North Metro, Inc. **
NAME OF SETTLING DEFENDANT

2445 Brown Rd, Orion, MI 48359
Address

By: Gerald K. Burger
Name of Officer

Gerald K. Burger
(Signature of Officer)

Vice President
Title

(Corporate Acknowledgement)

If different from above, the following is the name and address of this Settling Defendant's agent for service of process:

Michael L. Miller
Name

757 North Eldridge, Houston, TX 77079
Address

Prior Notice to all parties shall be provided by Settling Defendant of any change in the identity or address of the Settling Defendant or its agent for service of process.

* A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

** For itself and as alleged corporate successor to Macomb Disposal Service, Inc., Avon Disposal, Inc., and D&D Disposal, Inc.

The undersigned Settling Defendant hereby consents to the foregoing Consent Decree in U.S. v. Browning-Ferris Industries, Inc., et al.

6/10/92
Date

CADBURY BEVERAGES INC., for itself
and as alleged successor to
Canada Dry Corporation

NAME OF SETTLING DEFENDANT (Type)

6 High Ridge Park - P.O. Box 3800
Stamford, CT 06905

Address

By: Henry A. Udow

Name of Officer


(Signature of officer)

Vice President, General Counsel and
Secretary

Title

(Corporate Acknowledgement)

If different from above, the following is the name and address of this Settling Defendant's agent for service of process:

CT Corporation System
Name

1633 Broadway
New York, NY 10019

Address

Prior Notice to all parties shall be provided by Settling Defendant of any change in the identity or address of the Settling Defendant or its agent for service of process.

A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

(Corporate Acknowledgement)

A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

June 9, 1992
Date

By: J. A. Courter
Name of Officer

Secretary _____
Title _____

If different from above, the following is the name and address of this Settling Defendant's agent for service of process:

Name _____

Address

Prior Notice to all parties shall be provided by Settling Defendant of any change in the identity or address of the Settling Defendant or its agent for service of process.

A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

The undersigned Settling Defendant hereby consents to the foregoing Consent Decree in U.S. v. Browning-Ferris Industries, Inc., et al.

6-10-92
Date

General Motors Corporation
NAME OF SETTLING DEFENDANT (Type)
3031 W. Grand Blvd.
P.O. Box 33122
Detroit, MI. 48232
Address

By: Michelle T Fisher
Name of Officer

Michelle T Fisher
(Signature of officer)

Attorney
Title

(Corporate Acknowledgement)

If different from above, the following is the name and address of this Settling Defendant's agent for service of process:

Name

Address

Prior Notice to all parties shall be provided by Settling Defendant of any change in the identity or address of the Settling Defendant or its agent for service of process.

A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

The undersigned Settling Defendant hereby consents to the foregoing Consent Decree in U.S. v. Browning-Ferris Industries, Inc., et al.

JUNE 10, 1992
Date

GENERAL OIL COMPANY, INC.
NAME OF SETTLING DEFENDANT (Type)

12680 BEECH DALY ROAD, REDFORD, MI 48239
Address

By: TIMOTHY A. WESTERDALE
Name of Officer


(Signature of officer)

PRESIDENT
Title

(Corporate Acknowledgement)

If different from above, the following is the name and address of this Settling Defendant's agent for service of process:

GREG REICHARD
Name
12680 BEECH DALY ROAD
REDFORD, MI 48239
Address

Prior Notice to all parties shall be provided by Settling Defendant of any change in the identity or address of the Settling Defendant or its agent for service of process.

A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

The undersigned Settling Defendant hereby consents to the foregoing Consent Decree in U.S. v. Browning-Ferris Industries, Inc., et al.

May 28, 1992
Date

Minnesota Mining and
Manufacturing Company
NAME OF SETTLING DEFENDANT (Type)

P. O. Box 33331
St. Paul, MN 55133-3331
Address

By: Russell H. Susag
Name of Officer


(Signature of officer)

Director
Title

(Corporate Acknowledgement)

If different from above, the following is the name and address of this Settling Defendant's agent for service of process:

The Corporation Company
Name
615 Griswold St
Detroit, MI 48226
Address

Prior Notice to all parties shall be provided by Settling Defendant of any change in the identity or address of the Settling Defendant or its agent for service of process.

*A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

The undersigned Settling Defendant hereby consents to the foregoing Consent Decree in U.S. v. Browning-Ferris Industries, Inc., et al.

June 10, 1992
Date

The Sherwin-Williams Company and
 Acme Quality Paint Company, a
 subsidiary of The Sherwin-Williams Company
NAME OF SETTLING DEFENDANT (Type)

101 Prospect Avenue, N.W.
 Cleveland, Ohio 44115
Address

By: Louis E. Stellato
Name of Officer


 (Signature of officer)

Vice President, General Counsel & Secretary
Title

(Corporate Acknowledgement)

If different from above, the following is the name and address of this Settling Defendant's agent for service of process:

Allen J. Danzig
Name
 The Sherwin-Williams Company
 101 Prospect Avenue, N.W.
 Cleveland, Ohio 44115
Address

Prior Notice to all parties shall be provided by Settling Defendant of any change in the identity or address of the Settling Defendant or its agent for service of process.

A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

The undersigned Settling Defendant hereby consents to the foregoing Consent Decree in U.S. v. Browning-Ferris Industries, Inc., et al.

June 3, 1992

Date

TRW Inc.

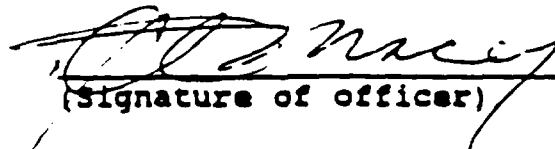
NAME OF SETTling DEFENDANT (Type)

1900 Richmond Road, Cleveland, OH 44124

Address

By: Chester O. Macey

Name of Officer



(Signature of officer)

Executive Vice President

Title

(Corporate Acknowledgement)

If different from above, the following is the name and address of this Settling Defendant's agent for service of process:

Robert M. Walter

Name

1900 Richmond Road, Cleveland, OH 44124

Address

Prior Notice to all parties shall be provided by Settling Defendant of any change in the identity or address of the Settling Defendant or its agent for service of process.

A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

The undersigned Settling Defendant hereby consents to the foregoing Consent Decree in U.S. v. Browning-Ferris Industries, Inc., et al.

June 10, 1992
Date

The Uniroyal Goodrich Tire Company as
successor in interest to
U.S. Rubber Co.
NAME OF SETTLING DEFENDANT (Type)

P.O. Box 19026
Greenville, SC 29602-9026
Address

By: Albin E. Ulle
Name of Officer

APG/faw 
(Signature of officer)

Vice President, General Counsel and Secretary
Title

(Corporate Acknowledgement)

If different from above, the following is the name and address of this Settling Defendant's agent for service of process:

CT Corporation
Name

75 Beattie Place, 12th Floor
Greenville, SC 29601
Address

Prior Notice to all parties shall be provided by Settling Defendant of any change in the identity or address of the Settling Defendant or its agent for service of process.

A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

Unisys Corporation on the behalf of
Trinova Corporation and Vickers, Incorporated

P.O. Box 500, Blue Bell, PA 19422 (M.S. C2SW15)
Address

David C. Benson
(Signature of officer)

Assistant Secretary
Title

If different from above, the following is the name and address of this Settling Defendant's agent for service of process:

1209 Orange Street, Wilmington, Delaware 19801
Address

Prior Notice to all parties shall be provided by Settling Defendant of any change in the identity or address of the Settling Defendant or its agent for service of process.

A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

The undersigned Settling Defendant hereby consents to the foregoing Consent Decree in U.S. v. Browning-Ferris Industries, Inc., et al.

June 4 1992
Date

Warner-Lambert Company
(Parke-Davis)
NAME OF SETTLING DEFENDANT (Type)

201 Tabor Road, Morris Plains, NJ
Address 07950

By: Dr. Elias K. Hebek
Name of Officer


(Signature of officer)

Vice President, WOD
Title

(Corporate Acknowledgement)

If different from above, the following is the name and address of this Settling Defendant's agent for service of process:

Name

Address

Prior Notice to all parties shall be provided by Settling Defendant of any change in the identity or address of the Settling Defendant or its agent for service of process.

A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

LIST OF APPENDICES

- Appendix 1 - List of Potentially Responsible Parties Noticed
- Appendix 2 - Record of Decision
- Appendix 3 - Explanation of Significant Differences
- Appendix 4 - Scope of Work
- Appendix 5 - Map of Site
- Appendix 6 - Deed Restrictions
- Appendix 7 - Consent for Access